

21 C.J.S. Courts § 264

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Courts

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VIII. Concurrent and Conflicting Jurisdiction

A. Courts of Same State

2. Transfer of Cases

b. Mode of and Procedure for Transfer; Denial of Transfer

§ 264. Transfer of case on court's own motion, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  487(2), 487(4), 487(9), 487(10)

Generally, an application to transfer a case can only be made by a party to the action or a person who has intervened in that action, but if permitted by statute, a court can transfer a case on its own motion.

Generally, an application to transfer a case can only be made by a party to the action or a person who has intervened in that action.¹ Either party may move for a transfer based on lack of subject-matter jurisdiction; plaintiffs are not barred from doing so on the ground that they have elected the forum.²

A court can transfer a case on its own motion, at least where expressly permitted to do so by statute or rule.³ Under a mandatory constitutional provision stipulating that causes erroneously brought

in equity court "shall" be transferred to the appropriate court of law, a chancellor in equity acts properly in transferring the case on his or her own motion rather than dismissing it.⁴

Where the court to which a case is appealed, whether the court of last resort or a subordinate appellate court, has no jurisdiction, it may of its own motion transfer the appeal to the other appellate court having jurisdiction, pursuant to rules so providing.⁵

Failure to respond to request.

The failure to timely respond to a motion to transfer does not divest the court of its inherent power to dispose of the matter consistent with applicable law or require a grant of the motion as a matter of law.⁶

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Footnotes

- 1 N.Y.—Estate of Israel, 88 Misc. 2d 999, 390 N.Y.S.2d 577 (Sur. Ct. 1977).
- 2 Miss.—Burnette v. Hartford Underwriters Ins. Co., 770 So. 2d 948 (Miss. 2000).
- 3 N.Y.—Brooks v. Board of Higher Ed. and Dormitory Authority of State of N. Y., 113 Misc. 2d 494, 449 N.Y.S.2d 425, 3 Ed. Law Rep. 1084 (Sup 1982).

Tex.—Weldon v. Hill, 678 S.W.2d 268 (Tex. App. Fort Worth 1984), writ refused n.r.e., (Mar. 6, 1985).
- 4 Miss.—Smith v. University of Mississippi, 797 So. 2d 956, 158 Ed. Law Rep. 890 (Miss. 2001).

As to the mandatory or discretionary nature of transfer, see § 261.
- 5 § 263.
- 6 Ga.—Hillis v. Hillis, 256 Ga. 438, 349 S.E.2d 746 (1986).